IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 16TH JANUARY 2007 / 26TH PAUSHA 1928

OP.No. 24964 of 1998(V)

PETITIONER:

ADARSHA VIDYANIDHI TRUST, ILLICKAL,
KOTTAYAM 686 003M REP.BY ITS MANAGING
TRUSTEE SRI.N.M.JOSEPH.

BY ADV. SRI.M.PATHROSE MATHAI
SRI.RAMESH JOHN

RESPONDENT:

THE COMMISSIONER OF INCOME TAX,
AYKAR BHAVAN, TRIVANDRUM

BY ADV. SRI.P.K.R.MENON(SR.),SC FOR IT
SRI.GEORGE K. GEORGE, SC FOR IT

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.43857/1998 IN OP. NO.24964/1998

DISMISSED

16.1.2007 **SD/- K.BALAKRISHNAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE TRUST DEED DT.4.12.95.

EXT.P2:- COPY OF THE APPLICATION DT.18.3.1998 FOR REGISTRATION OF THE TRUST .

EXT.P3:- COPY OF THE MEMO DT. 28.5.1998 ISSUED BY THE RESPONDENT TO THE PETITIONER.

EXT.P4:- COPY OF THE SUPPLEMENTARY DEED OF TRUST DT.29.9.1998.

EXT.P5:- COPY OF THE NOTICE DT.9.9.98 ISSUED BY THE RESPONDENT TO THE PETITIONER.

EXT.P6:- COPY OF THE ORDER DT.30.9.98 RECEIVED BY THE PETITIONER FROM THE RESPONDENT.

/TRUE COPY/

tss

K.BALAKRISHNAN NAIR, J.

O.P.NO.24964 of 1998-V

Dated this the 16th day of January, 2007

JUDGMENT

The petitioner is a public charitable trust registered on 4-12-1995. Ext.P1 is the Trust Deed. It applied to the respondent for getting itself registered under Sec.12A of the Income Tax Act, 1961 so that it can avail the benefits under Sections 11 and 12 of the Income Tax Act. Ext.P2 is the application submitted by it. The respondent issued Ext.P3 defect memo pointing out the defects to be cured in the petitioner's application. On receipt of the said memo, the petitioner submits it cured all the defects and Ext.P4 rectification deed was also executed so as to bind the trust deed in conformity with the directions in Ext.P3. The petitioner was heard pursuant to Ext.P5 notice and the respondent passed Ext.P6 order rejecting its application for registration. It is an order passed under Sec.12AA (b) of the Income Tax Act, 1961. Petitioner attacks Ext.P6. According to it, the defects pointed out in the application of its were those mentioned in Ext.P3. Its application was rejected for not curing defects mentioned there. The ground mentioned in Ext.P6 for rejecting the application is

that the Trust is not carrying out the activities mentioned as the subject in the Trust Deed. The only activity carried on is running of school. So, the application was rejected by the respondent. The relevant portion of the said order reads as follows:

> "Even though the Trust Deed contains a very large number of objectives, it is not carrying out any activities in accordance with most of them. The only activity carried on is the running of the school. In these circumstances I am not satisfied about most of the objectives of the trust. Hence registration u/s.12A is not granted."

The petitioner points out that this was not a ground to in Ext.P3. Further, the learned counsel for the petitioner relied on the decisions of the Alahabad High Court in Fifth Generation Education Society Vs. Commissioner Income Tax (185 ITR 634) and of the Madras High Court in (246ITR 522). Though the decision would indicate that actually carrying on of charitable activities is not relevant factor at the time of grant of registration, the same may be relevant only at the time of considering the eligibility of the trust to enjoy the benefit of Sections 11 and 5.

2. The respondent has filed a counter affidavit resisting

the prayers in the original petitoin. In the counter affidavit it is stated that the respondenthas made an enquiry into the affairs of the functioning of the trust. It was found that for rnning school the petitoenr was collecting interest free loan of Rs.5,000/- from its students at the time of admission and monthly tuition fee of Rs.300/-. At present there are 255 students. So, the school being run by the trust on commercial lines and the same cannot be described as a charitable Trust. The respondent also relied on the decision of the Apex Court in Addl. C.I.T. Vs. Surat Art Silk Cloth Mfrs. Assn. (121 ITR 1). The observation in the said judgment to the effect that if the activity is carried out for profiteering the same should be treated as non-charitable. Even if it may serve general public as public utility.

3. Heard the learned counsel on both sides. While judicially reviewing Ext.P6, this Court is not concerned with the decision, but the decision making process. Going by that principle, I feel that the impugned decision is vitiated. The ground which has not been put to the petitioner and which does not find a place in the impugned order has been relied on as evident from the counter affidavit to reject the petitioner's application. So, the order has been passed in violation of the principles of natural

justice. Accordingly, Ext.P6 is quashed. The respondent is directed to re-consider Ext.P2 application. The statement contained in the counter affidavit shall be treated as the objection of the respondent to grant. The petitioner may file its response to that objection, within month from today. The respondent shall thereafter afford an opportunity of being heard to the petitioner and pass fresh orders taking in to account the contentions of the petitioner. Since the matter is remitted, I am not expressing any opinion regarding the contentions raised by both sides relying on the decisions of Alahabad and Madras High Courts and also the decision of the Apex Court.

K.BALAKRISHNAN NAIR,JUDGE.

MS

K.BALAKRISHNAN NAIR, J.

O.P. No. 24964 of 1998-V

J U D G M E N T

DATED 16th JANUARY,2007